

IC 6-8.1-3

Chapter 3. Duties, Powers, and Responsibilities

IC 6-8.1-3-1

Tax administration, collection, and enforcement; motor vehicle excise tax; commercial vehicle excise taxes

Sec. 1. (a) The department has the primary responsibility for the administration, collection, and enforcement of the listed taxes. In carrying out that responsibility, the department may exercise all the powers conferred on it under this article in respect to any of those taxes.

(b) In the case of the motor vehicle excise tax, the department has the responsibility to act only in the investigation, assessment, collection, and enforcement of the tax in instances of delinquency or evasion. Primary responsibility for the administration and collection of the tax remains with the agencies named in IC 6-6-5.

(c) In the case of commercial vehicle excise taxes that are payable to the bureau of motor vehicles and are not subject to apportionment under the International Registration Plan, the department has the responsibility to act only in the investigation, assessment, collection, and enforcement of the tax in instances of delinquency or evasion. Primary responsibility for the administration and collection of the tax remains with the bureau of motor vehicles.

(d) The department has the primary responsibility for the administration, investigation, and enforcement of IC 4-32.

As added by Acts 1980, P.L.61, SEC.1. Amended by P.L.335-1989(ss), SEC.18; P.L.24-1992, SEC.57; P.L.181-1999, SEC.4.

IC 6-8.1-3-2

Employees; hiring; compensation; conflict of interest

Sec. 2. (a) The commissioner, with the governor's approval, may employ such individuals as are necessary to perform the various functions of the department.

(b) The commissioner and the budget agency shall set the compensation for the department's employees.

(c) Before January 1, 1983, an employee of the department may not perform any activity, outside the department, involving the representation of another person at an audit by the department.

(d) After December 31, 1982, an employee of the department may not perform any activity, outside the department, involving the representation of another person for compensation, if that activity could conflict with his departmental job. An employee may not prepare state or federal tax returns for compensation and he may not perform accounting or legal services for compensation, if those services or the results of those services pertain to or are used in the preparation of a state or federal tax return.

(e) For a period of two (2) years after the termination of his employment with the department, a former employee may not act in any capacity for a person (other than the department, another state

agency, or the federal government) in a matter that was pending in the department during the period of the former employee's employment.

As added by Acts 1980, P.L.61, SEC.1.

IC 6-8.1-3-2.2

Unauthorized investigations or surveillance

Sec. 2.2. (a) This section does not:

- (1) apply to an otherwise lawful investigation concerning organized crime activities; or
- (2) prohibit, restrict, or prevent the exchange of information if a person is being investigated for multiple violations of IC 6-2.5 (state gross retail and use taxes).

(b) As used in this section, "investigation" means an oral or written inquiry directed to a person, organization, or governmental entity.

(c) As used in this section, "surveillance" means the monitoring of a person, place, or event by:

- (1) electronic interception;
- (2) overt or covert observations;
- (3) photography; or
- (4) the use of informants.

(d) The commissioner or an employee of the department may not knowingly authorize, require, or conduct:

- (1) an investigation; or
- (2) a surveillance;

unless the purpose of the investigation or surveillance is reasonably related to the administration of a listed tax.

(e) A person who violates this section may be disciplined under IC 4-15-2.

As added by P.L.332-1989(ss), SEC.21.

IC 6-8.1-3-2.5

Employee evaluations based on revenue production or quotas

Sec. 2.5. The department may not:

- (1) include the amount of revenue collected or tax liability assessed in the evaluation of an employee; or
- (2) impose or suggest production quotas or goals for employees based on the number of cases closed.

As added by P.L.332-1989(ss), SEC.22.

IC 6-8.1-3-2.6

Certification of compliance with employee evaluation criteria

Sec. 2.6. The commissioner shall certify in the report submitted under IC 6-8.1-14-3 that the department is in compliance with section 2.5 of this chapter.

As added by P.L.332-1989(ss), SEC.23.

IC 6-8.1-3-3

Removal of expired rules

Sec. 3. (a) The department shall adopt, under IC 4-22-2, rules governing:

- (1) the administration, collection, and enforcement of the listed taxes;
- (2) the interpretation of the statutes governing the listed taxes;
- (3) the procedures relating to the listed taxes; and
- (4) the methods of valuing the items subject to the listed taxes.

(b) No change in the department's interpretation of a listed tax may take effect before the date the change is:

- (1) adopted in a rule under this section; or
- (2) published in the Indiana Register under IC 4-22-7-7(a)(5), if IC 4-22-2 does not require the interpretation to be adopted as a rule;

if the change would increase a taxpayer's liability for a listed tax.

(c) The department shall furnish copies of its rules and statements described in subsection (b)(2) to the public at a cost equivalent to the preparation and mailing costs of those rules or statements. However, the department shall furnish the rules or statements, on request, free of charge to governmental officials of any state or of the federal government.

As added by Acts 1980, P.L. 61, SEC.1. Amended by P.L.105-1987, SEC.1; P.L.17-1996, SEC.8.

IC 6-8.1-3-3.5

Guidelines available for public inspection and copying; letters of findings; removal of information

Sec. 3.5. (a) Subject to subsection (b), the department shall publish in the Indiana Register under IC 4-22-7-7 and make available for public inspection and copying under IC 5-14-3 information bulletins, revenue rulings (including, after complying with subsections (b) through (e), letters of findings), and other guidelines that:

- (1) are issued by the department; and
- (2) concern a listed tax.

(b) When the department issues a letter of findings, the department shall provide a copy of the letter of findings to the taxpayer to which the letter of findings pertains. The department shall notify the taxpayer of the taxpayer's right to delete information described under subsection (c).

(c) Not more than thirty (30) days after a taxpayer receives a letter of findings under subsection (b), the taxpayer to which the letter of findings pertains may request in writing that the department remove any of the following information that is contained in the letter of findings:

- (1) A name, address, or other identifying detail of:
 - (A) the business or other person to whom the written determination pertains; or
 - (B) any other business or other person identified in the written determination or a background file document.
- (2) A trade secret or other commercial or financial information

obtained from a business or other person that is privileged or confidential.

(3) Information, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(4) Information contained in or related to an examination, operating, or condition report prepared by, on behalf of, or for use of an agency responsible for the regulation or supervision of a financial institution.

(5) Information specifically exempted from disclosure by any other statute that is applicable to the department of state revenue.

A request to remove information under this subsection must include a copy of the letter of findings that is marked to identify the information that the person seeks to remove.

(d) Before publishing or making a letter of findings available for public inspection, the department shall remove information marked by a taxpayer for removal from the letter of findings to the extent that:

(1) the request was submitted to the department in conformity with subsection (c); and

(2) the information marked for removal qualifies under subsection (c)(1) through (c)(5).

However, if after removal of information marked by a taxpayer, the letter of findings does not clearly indicate the position of the department on the matter of tax law addressed by the letter of findings, the department shall add back deleted items or substitute words and numbers to the extent necessary to clearly indicate the position of the department on the matter of tax law addressed by the letter of findings.

(e) IC 5-14-3-4, IC 6-8.1-7-1, and any other law exempting information from disclosure by the department does not apply to this subsection. Subject to subsection (d), the department shall submit the letter of findings for publication in the Indiana Register under IC 4-22-7-7 and make the letter of findings available for public inspection and copying under IC 5-14-3 not earlier than thirty (30) days after the taxpayer receives the letter of findings and not later than sixty (60) days after the taxpayer receives the letter of findings. *As added by P.L.28-1997, SEC.24.*

IC 6-8.1-3-4

Forms

Sec. 4. The department has the sole authority to furnish forms used in the administration and collection of the listed taxes.

As added by Acts 1980, P.L.61, SEC.1. Amended by P.L.36-1984, SEC.2.

IC 6-8.1-3-5

Signature on documents

Sec. 5. All notices, summons, warrants, waivers, demands, or other documents requiring an authorizing signature by the

department must be signed by the commissioner or his designee; and when that document is signed it is an official department document.
As added by Acts 1980, P.L.61, SEC.1.

IC 6-8.1-3-6

Records; audit

Sec. 6. (a) The department shall maintain, for a period of at least three (3) years, a record of all monies received and disbursed, and copies of all returns filed with the department.

(b) At the end of each fiscal year, the state board of accounts shall audit the department's record of receipts and disbursements.

As added by Acts 1980, P.L.61, SEC.1.

IC 6-8.1-3-7

Reciprocal information agreements; cooperation of other agencies

Sec. 7. (a) The department may enter into reciprocal agreements with the taxing officials of the United States government or with the taxing officials of other state governments to furnish and receive information relevant to the administration and enforcement of the listed taxes. However, the department may not furnish information obtained from federal returns or schedules to officials of other state governments.

(b) All agencies of the state of Indiana shall cooperate with the department in the administration of the listed taxes and shall furnish to the department any information relevant to the administration and collection of the listed taxes that the department requests.

As added by Acts 1980, P.L.61, SEC.1.

IC 6-8.1-3-7.1

Department agreement to provide information to fiscal officer; electronic format; information may not be disclosed

Sec. 7.1. (a) "Fiscal officer" has the meaning set forth in IC 36-1-2-7.

(b) The department shall enter into an agreement with the fiscal officer of an entity that has adopted an innkeeper's tax, a food and beverage tax, or an admissions tax under IC 6-9 to furnish the fiscal officer annually with:

- (1) the name of each business collecting the taxes listed in this subsection; and
- (2) the amount of money collected from each business.

(c) The agreement must provide that the department must provide the information in an electronic format that the fiscal officer can use, as well as a paper copy.

(d) The agreement must include a provision that, unless in accordance with a judicial order, the fiscal officer, employees of the fiscal officer, former employees of the fiscal officer, counsel of the fiscal officer, agents of the fiscal officer, or any other person may not divulge the names of the businesses, the amount of taxes paid by the businesses, or any other information disclosed to the fiscal officer by the department.

As added by P.L.178-2002, SEC.72.

IC 6-8.1-3-8

Representation of taxpayers before department; qualifications; requirements

Sec. 8. The department may prescribe qualifications a person must have to represent a taxpayer before the department. However, a person may not represent a taxpayer before the department, unless:

- (1) the taxpayer is present at all times when the representation occurs; or
- (2) the person representing the taxpayer has a properly executed power of attorney authorizing him to represent the taxpayer.

As added by Acts 1980, P.L.61, SEC.1.

IC 6-8.1-3-8.5

Taxpayer hearings

Sec. 8.5. (a) This section applies to a hearing conducted by the department under this article.

(b) A hearing shall be conducted at a time and a location that is reasonable and convenient to the taxpayer whenever possible.

(c) The department shall notify the taxpayer before the hearing that the taxpayer is entitled to:

- (1) have a representative qualified under section 8 of this chapter present at the hearing; and
- (2) record the hearing.

(d) The department may not record a hearing unless the department notifies the taxpayer before the hearing begins that the department:

- (1) intends to record the hearing; and
- (2) will provide a copy of the recording to the taxpayer.

As added by P.L.332-1989(ss), SEC.24.

IC 6-8.1-3-9

Office space

Sec. 9. The state of Indiana shall provide suitable office space in Marion County, where the department shall maintain its primary offices. The department may rent, lease, or otherwise acquire additional office space at locations outside Marion County, if the department feels that efficiency or economy is best served by locating branch offices at those locations. However, an agreement securing office space for a branch office may not extend for a time of more than ten (10) years.

As added by Acts 1980, P.L.61, SEC.1.

IC 6-8.1-3-10

Contracts for services

Sec. 10. (a) The department may enter into contracts with persons outside the department to provide services that the department feels are necessary to properly administer and collect the listed taxes.

(b) A contract entered into under this section must require the

person providing the service to comply with the requirements governing the administration and collection of taxes by the department.

As added by Acts 1980, P.L.61, SEC.1. Amended by P.L.332-1989(ss), SEC.25.

IC 6-8.1-3-11

Mailing of documents

Sec. 11. (a) When a statute specifies that the department is required to send a document by mail, and the particular statute is silent as to the class or type of mailing to be used, the department satisfies the mailing requirement by mailing the document through the United States mail in any of the following methods:

- (1) first-class mail;
- (2) registered mail, return receipt requested;
- (3) certified mail; or
- (4) certificate of mailing.

The choice of the method is at the department's discretion.

(b) The department may use any form of mailing in cases where a mailing is not required by statute.

As added by Acts 1980, P.L.61, SEC.1.

IC 6-8.1-3-12

Powers; department; county treasurer; audits; appraisals; investigations

Sec. 12. (a) The department may audit any returns filed in respect to the listed taxes, may appraise property if the property's value relates to the administration or enforcement of the listed taxes, may audit gasoline distributors for financial responsibility, and may investigate any matters relating to the listed taxes.

(b) For purposes of conducting its audit or investigative functions, the department may:

- (1) subpoena the production of evidence;
- (2) subpoena witnesses; and
- (3) question witnesses under oath.

The department may serve its subpoenas or it may order the sheriff of the county in which the witness or evidence is located to serve the subpoenas.

(c) The department may enforce its audit and investigatory powers by petitioning for a court order in any court of competent jurisdiction located in the county where the tax is due or in the county in which the evidence or witness is located. If the evidence or witness is not located in Indiana or if the department does not know the location of the evidence or witness, the department may file the petition in a court of competent jurisdiction in Marion County. The petition to the court must state the evidence or testimony subpoenaed and must allege that the subpoena was served but that the person did not comply with the terms of that subpoena.

(d) Upon receiving a proper petition under subsection (c), the court shall promptly issue an order which:

- (1) sets a hearing on the petition on a date not more than ten (10) days after the date of the order; and
- (2) orders the person to appear at the hearing prepared to produce the subpoenaed evidence and give the subpoenaed testimony.

If the defendant is unable to show good cause for not producing the evidence or giving the testimony, the court shall order the defendant to comply with the subpoena.

(e) If the defendant fails to obey the court order, the court may punish the defendant for contempt.

(f) Officers serving subpoenas or court orders and witnesses appearing in court are entitled to the normal compensation provided by law in civil cases. The department shall pay the compensation costs from the money appropriated for the administration of the listed taxes.

(g) County treasurers investigating tax matters under IC 6-9 have:

- (1) concurrent jurisdiction with the department;
- (2) the audit, investigatory, appraisal, and enforcement powers described in this section; and
- (3) authority to recover court costs, fees, and other expenses related to an audit, investigatory, appraisal, or enforcement action under this section.

As added by Acts 1980, P.L.61, SEC.1. Amended by P.L.71-1993, SEC.16; P.L.254-2003, SEC.9.

IC 6-8.1-3-13

Criminal prosecutions; civil actions

Sec. 13. (a) The attorney general and the respective county prosecuting attorneys have concurrent jurisdiction in conducting criminal prosecutions of tax matters. Either the attorney general or the respective prosecuting attorney may initiate criminal tax proceedings, and appear before grand juries to report violations, give legal advice, or interrogate witnesses.

(b) Upon request by the department, the attorney general shall prosecute a civil action to collect unpaid taxes, penalties, and interest and to enforce the department's powers.

As added by Acts 1980, P.L.61, SEC.1.

IC 6-8.1-3-14

Motor fuel taxes; apportionment on allocation basis; reciprocal agreements; International Fuel Tax Agreement

Sec. 14. (a) The department, on behalf of the state, may enter into and become a member of the International Fuel Tax Agreement or other reciprocal agreements providing for the imposition of motor fuel taxes on an apportionment or allocation basis with the proper authority of any state, any commonwealth, the District of Columbia, a state or province of a foreign country, or a territory or possession of either the United States or of a foreign country.

(b) The department may adopt rules under IC 4-22-2 to carry out and enforce the provisions of the International Fuel Tax Agreement

or any other agreement entered into under this section.

(c) If the department enters into the International Fuel Tax Agreement or into any other agreement under this chapter, and if the provisions set forth in that agreement or other agreements:

- (1) are different from provisions prescribed by an Indiana statute, then the provisions of the Indiana statute prevail; and
- (2) are different from provisions prescribed by the Indiana Administrative Code, then the provisions of the agreement prevail.

This subsection does not affect the operation of IC 6-6-4.1-22, IC 6-6-4.1-23, IC 6-6-4.1-24, IC 6-6-4.1-25, or IC 6-6-4.1-26.

(d) This section constitutes complete authority for the imposition of motor fuel taxes upon an apportionment or allocation basis without reference to or application of any other statutes of this state.
As added by P.L.106-1987, SEC.1. Amended by P.L.129-2001, SEC.20.

IC 6-8.1-3-15

Report; uncollectible delinquent tax liabilities

Sec. 15. Before February 1 of each year, the department shall submit to the general assembly the age and amount of delinquent tax liabilities that the department determines to be uncollectible.

As added by P.L.6-1987, SEC.10.

IC 6-8.1-3-16

Outstanding tax warrants; list; tax releases; motor vehicle title tax liens; tax collector fees; sheriffs; Internet publication of list of tax warrants issued 24 months before publication

Sec. 16. (a) The department shall prepare a list of all outstanding tax warrants for listed taxes each month. The list shall identify each taxpayer liable for a warrant by name, address, amount of tax, and either Social Security number or employer identification number. Unless the department renews the warrant, the department shall exclude from the list a warrant issued more than ten (10) years before the date of the list. The department shall certify a copy of the list to the bureau of motor vehicles.

(b) The department shall prescribe and furnish tax release forms for use by tax collecting officials. A tax collecting official who collects taxes in satisfaction of an outstanding warrant shall issue to the taxpayers named on the warrant a tax release stating that the tax has been paid. The department may also issue a tax release:

- (1) to a taxpayer who has made arrangements satisfactory to the department for the payment of the tax; or
- (2) by action of the commissioner under IC 6-8.1-8-2(k).

(c) The department may not issue or renew:

- (1) a certificate under IC 6-2.5-8;
- (2) a license under IC 6-6-1.1 or IC 6-6-2.5; or
- (3) a permit under IC 6-6-4.1;

to a taxpayer whose name appears on the most recent monthly warrant list, unless that taxpayer pays the tax, makes arrangements

satisfactory to the department for the payment of the tax, or a release is issued under IC 6-8.1-8-2(k).

(d) The bureau of motor vehicles shall, before issuing the title to a motor vehicle under IC 9-17, determine whether the purchaser's or assignee's name is on the most recent monthly warrant list. If the purchaser's or assignee's name is on the list, the bureau shall enter as a lien on the title the name of the state as the lienholder unless the bureau has received notice from the commissioner under IC 6-8.1-8-2(k). The tax lien on the title:

(1) is subordinate to a perfected security interest (as defined and perfected in accordance with IC 26-1-9.1); and

(2) shall otherwise be treated in the same manner as other title liens.

(e) The commissioner is the custodian of all titles for which the state is the sole lienholder under this section. Upon receipt of the title by the department, the commissioner shall notify the owner of the department's receipt of the title.

(f) The department shall reimburse the bureau of motor vehicles for all costs incurred in carrying out this section.

(g) Notwithstanding IC 6-8.1-8, a person who is authorized to collect taxes, interest, or penalties on behalf of the department under IC 6-3 or IC 6-3.5 may not, except as provided in subsection (h) or (i), receive a fee for collecting the taxes, interest, or penalties if:

(1) the taxpayer pays the taxes, interest, or penalties as consideration for the release of a lien placed under subsection

(d) on a motor vehicle title; or

(2) the taxpayer has been denied a certificate or license under subsection (c) within sixty (60) days before the date the taxes, interest, or penalties are collected.

(h) In the case of a sheriff, subsection (g) does not apply if:

(1) the sheriff collects the taxes, interest, or penalties within sixty (60) days after the date the sheriff receives the tax warrant; or

(2) the sheriff collects the taxes, interest, or penalties through the sale or redemption, in a court proceeding, of a motor vehicle that has a lien placed on its title under subsection (d).

(i) In the case of a person other than a sheriff:

(1) subsection (g)(2) does not apply if the person collects the taxes, interests, or penalties within sixty (60) days after the date the commissioner employs the person to make the collection; and

(2) subsection (g)(1) does not apply if the person collects the taxes, interest, or penalties through the sale or redemption, in a court proceeding, of a motor vehicle that has a lien placed on its title under subsection (d).

(j) IC 5-14-3-4, IC 6-8.1-7-1, and any other law exempting information from disclosure by the department does not apply to this subsection. From the list prepared under subsection (a), the department shall compile each month a list of the taxpayers subject to tax warrants that:

(1) were issued at least twenty-four (24) months before the date of the list; and

(2) are for amounts that exceed one thousand dollars (\$1,000). The list compiled under this subsection must identify each taxpayer liable for a warrant by name, address, and amount of tax. The department shall publish the list compiled under this subsection on accessIndiana (as defined in IC 5-21-1-1.5) and make the list available for public inspection and copying under IC 5-14-3. The department or an agent, employee, or officer of the department is immune from liability for the publication of information under this subsection.

(k) The department may not publish a list under subsection (j) that identifies a particular taxpayer unless at least two (2) weeks before the publication of the list the department sends notice to the taxpayer stating that the taxpayer:

(1) is subject to a tax warrant that:

(A) was issued at least twenty-four (24) months before the date of the notice; and

(B) is for an amount that exceeds one thousand dollars (\$1,000); and

(2) will be identified on a list to be published on accessIndiana unless a tax release is issued to the taxpayer under subsection (b).

(l) The department may not publish a list under subsection (j) after June 30, 2006.

As added by P.L.332-1989(ss), SEC.26. Amended by P.L.2-1991, SEC.52; P.L.277-1993(ss), SEC.50; P.L.57-2000, SEC.2; P.L.192-2002(ss), SEC.141; P.L.81-2004, SEC.41.

IC 6-8.1-3-17

Settlement of tax liability disputes

Sec. 17. (a) Before an original tax appeal is filed with the tax court under IC 33-26, the commissioner may settle any tax liability dispute if a substantial doubt exists as to:

(1) the constitutionality of the tax under the Constitution of the State of Indiana;

(2) the right to impose the tax;

(3) the correct amount of tax due;

(4) the collectibility of the tax; or

(5) whether the taxpayer is a resident or nonresident of Indiana.

(b) After an original tax appeal is filed with the tax court under IC 33-26, and notwithstanding IC 4-6-2-11, the commissioner may settle a tax liability dispute with an amount in contention of twenty-five thousand dollars (\$25,000) or less.

(c) Notwithstanding IC 6-8.1-7-1(a), the terms of a settlement under subsection (b) are available for public inspection.

As added by P.L.332-1989(ss), SEC.27. Amended by P.L.28-1997, SEC.25; P.L.98-2004, SEC.72.

IC 6-8.1-3-18

Enforcement of games of chance provisions

Sec. 18. An employee of the department is vested with full police powers and duties to enforce IC 4-32 and IC 35-45-5 as it relates to violations of IC 4-32.

As added by P.L.24-1992, SEC.58. Amended by P.L.18-1994, SEC.40.

IC 6-8.1-3-19**Voter registration form to be included with income tax booklet**

Sec. 19. The department shall print and include a voter registration form designed by the Indiana election commission under IC 3-7-23 in each state adjusted gross income tax booklet that is mailed to a taxpayer using a preprinted mailing label with an Indiana address.

As added by P.L.12-1995, SEC.98. Amended by P.L.2-1996, SEC.219.